



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 596-99

5 April 2000

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments  
(2) Case Summary  
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy filed enclosure (1) with this Board requesting that his record be corrected to show that he retired vice being discharged on 29 August 1998.

2. The Board, consisting of Mr. Pfeiffer, Mr. Kastner and Mr. Zsalmán, reviewed Petitioner's allegations of error and injustice on 28 March 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner reenlisted in the Navy on 15 August 1995 for four years. On 20 April 1998 a physical evaluation board found him unfit for duty with a disability rated at 10%, and recommended discharge with severance pay. On 30 April 1998 Petitioner noted that he had completed over 18 years of active service and requested retention on active duty to complete 20 years of active service. On 28 May 1998 this request was denied by the Bureau of Naval Personnel. However, it was directed that he be extended on active duty until 31 October 1998 so that he was eligible for and could request retirement under the provisions of the Temporary Early Retirement Authority (TERA). The next entry in the record shows that he was honorably discharged on 29 August 1998 with disability severance pay in the amount of \$50,328.

d. In his application, Petitioner states that he thought he had until later in 1998 to decide whether to request retirement under TERA and did not realize that action had to be taken to stop the disability proceedings. He contends, in effect, that an injustice occurred because he was not allowed to request retirement under TERA. He is aware that corrective action will result in recoupment of the severance pay.

e. The Board is aware that the Uniform Retirement Date Act, 5 U.S.C. 8301 requires that the effective date of any retirement be the first day of the month.

#### CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes that BUPERS extended him on active duty so that he could request retirement under TERA but he was discharged before this could be accomplished. Therefore, the Board concludes that the record should be corrected to show that he transferred to the Fleet Reserve under the provisions of TERA.

Given the requirements of the Uniform Retirement Date Act, he should be transferred to the Fleet Reserve on 31 August 1998 vice being discharged on 29 August 1998.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand his status in the Fleet Reserve.

#### RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 31 August 1998 he transferred to the Fleet Reserve under the provisions of TERA vice being discharged on 29 August 1998.

b. That this Report of Proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.


ROBERT D. ZSALMAN  
Recorder



ALAN E. GOLDSMITH  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section

6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

  
W. DEAN PFEIFFER  
Executive Director